

THE LOUISVILLE DAILY JOURNAL.

VOLUME XXXVI.

LOUISVILLE, KENTUCKY, FRIDAY, OCTOBER 26, 1866.

NUMBER 288

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FRIDAY, OCTOBER 26, 1866.

Respecting the contention in Maryland, we have expressed the opinion that the law is clearly against the radicals, and have briefly given our reasons for the opinion. As, however, there is no telling where the contention may end, we think it best to set forth these reasons in a more definite and authentic form.

We have said that the law of Maryland empowers the Governor during the recess of the Legislature to remove the Police Commissioners of Baltimore for official misconduct. This is the simple fact.

Here is the language of the law itself:

For official misconduct, any of the said Commissioners may be removed by a concurrent resolution of the two Houses of the General Assembly, or by the Governor in the recess thereof.

The power of removal is thus expressly conferred on the Governor.

The exercise of this power is regulated as follows:

Code of Public General Law, Article 42.

Sec. 13. Upon complaint made against any civil or military officer who can be removed or suspended by the Governor, the Governor may summon before him any witness to testify for or against such complainant, and may allow such witness one dollar a day for their attendance, and itinerant charges, and may excuse the attendance of such witnesses in the same manner as the courts may do.

See 14. Upon complaints being made under the preceding section, the party complained against shall have a copy of the complaint, and notice of the time when the Governor will inquire into and examine the same.

These citations present the law and all the law on the subject. Their language is explicit. It is unmistakable. The power of the Governor is clear beyond a shadow of doubt.

* Yet there may be those who think or fancy that there is possibly some unperceived hitch in the way of the exercise of the power. Many people have a notion that nothing is plain in law. They fear mystery when they see none.

For the benefit of such people, and in order to put the question beyond the reach of doubt in the minds of all, we give the following correspondence, which contains an exposition of the law in question by the first lawyer in America:

BALTIMORE, Oct. 19.

To the Hon. REVERDY JOHNSON:

Sir: Having been appointed a select committee to employ counsel to represent the State of Maryland in the cause which they have made to His Excellency the Governor of the State of Maryland for the removal of two of the Police Commissioners of the said city, Dr. Nicholas L. Wood, Dr. Samuel A. Hedges, on the ground of "official misconduct," we respectfully request your professional services in their behalf, and hope that you will undertake their cause.

Your obedient servants,

R. S. EVANS,
S. S. SHIPLEY,
H. R. DULANEY.
REVERDY JOHNSON.

BALTIMORE, October 20.

To Messrs. ALFRED D. EAGAN, S. S. SHIPLEY, and H. R. DULANEY:

GENTLEMEN: Your note of yesterday is received. I regret that professional engagements will now interfere with my time, and which prevent me from all the coming week, but, out of my power to act as counsel in the matter you refer to.

In compliance with a verbal request of one of your members, I proceed to state my opinion on the legal question which the matter presents:

Has the Governor, in the view of the General Assembly, the power to remove the Police Commissioners of the city for "official misconduct"? I have no doubt that he has.

The words of the law are so plain as to admit of but one construction. The duties of the office are well defined, and to guard against failure to perform them, the agency that might happen) the law says: "For official misconduct, any of the said Commissioners may be removed by a concurrent vote of the two Houses of the General Assembly, or by the Governor during the recess thereof."

This is the only provision on the subject. The offence guarded against is "official misconduct." The penalty for it is removal from office, but, if removed, from office alone, and the authority to investigate all the facts and enforce the penalty is, if in session, the General Assembly. If not in session, the Governor. There being no legislative process, the jurisdiction and the power to inflict the penalty is in the Governor. It is suggested, I am told, that before he can remove the Commissioners the fact of their official misconduct must be tried by a court, and justly, etc.

First. Because the courts are not named in the law, either expressly or impliedly, as having any jurisdiction in the case.

Second. Because the Governor, who can remove the Commissioners, but cannot remove them from office, and the authority to investigate all the facts and enforce the penalty is in the Governor. It is suggested, I am told, that before he can remove the Commissioners the fact of their official misconduct must be tried by a court, and justly, etc.

Third. Because the courts are not named in the law, either expressly or impliedly, as having any jurisdiction in the case.

Fourth. Because, no matter what a court might find to be the fact, it could not be found out, was, whether, in reality, they can be tried, or if, in the other, deprive the Governor of his power to award it, or absolve him from the duty of doing so.

And lastly, because the power, despite a legal technicality, is the same over the funds and penalty as that of the General Assembly when in session; and I suppose that no one will hold that body could only act in session, or, in absence, in any of the courts.

It is impossible, I think, for a sound mind to entertain a doubt upon the point.

The long and well settled doctrine of the law is, that the power to remove officers and agents, and the authority to investigate all the facts and enforce the penalty is, in the President and Senate jointly, a removal required the sanction of both. Neither in the debate when the question was first introduced, nor has since been had it been intimated that, if the power had been given in express terms to the President, he could not exercise it, or that it was not his duty to do so with the concurrence of any other body, legislative or judicial.

Upon the whole, therefore, I have no doubt that it is given to the Governor alone, the Legislature not being in session, to investigate and to remove the alleged misconduct of the Police Commissioners, and to remove them if he be satisfied that they have been guilty of "official misconduct."

Yours, respectively,
REVERDY JOHNSON.

This exposition of the law must satisfy everybody. In view of it, no doubt on the point can linger in the mind of anybody. That the law is against the radicals is as plain as the sun at noonday. The merits of the question do not admit of controversy.

Their chosen spokesman, John W. Forney, published in the Philadelphia Press of Tuesday a long letter double-folded, in which everything they can say is said, the substance of the whole being that the Constitution of Maryland disenfranchises rebels,

and that the Police Commissioners have only carried out the intention of the Constitution. This, as we need not say, is the question in dispute. The commissioners are arraigned for official misconduct under the existing Constitution and laws of the State. Whether they are guilty or not is the question to be tried. If they are guilty, let them rebut the evidence of their guilt, and they will not be removed. But this they decline to attempt.

Instead of preparing to repel the accusation, they are preparing to resist the decision, thereby confessing their guilt, and making it blacker. Being delinquents, they have become conspirators, and threaten to become traitors. This is their predicament before the law and before the country.

If the radicals intend at all hazards to rekindle civil war, they perhaps might as well use these offenders for the torch, because one less likely to raise a consuming flame could hardly be found; but we hope that the radicals do not harry this wicked intention. If they do, the sooner they expect it the better for themselves as well as for other people. A second war might put an end to whatever liberty the first one left us. Men should contemplate with horror the possibility of another war. Even had men might well recoil from the horrible prospect.

We have frequently called the attention of our home readers to the property of supporting and encouraging home trade. It is a subject that receives far little consideration.

The growth and prosperity of the city of Louisville are involved, and it is proper that those most interested—the property owners of the city—should be invited to ponder the subject at this particular time.

The accumulation of wealth in a community like this proceeds upon the principle of reciprocal aid and encouragement among its members.

The merchants of the East, even watchful of their interests, and ever united in their efforts to clutch the trade that offers from any section, are flooding the newly-opened Southern States with advertisements, setting forth their several inducements in their several lines of trade, and inviting patronage. Every exchange is literally crammed with Eastern advertisements.

While these efforts are making by the Eastern merchants, and the trade that legitimately belongs to Louisville is slipping from our grasp, what are the mercantile population of Louisville doing to stay this serious dwindling of our commerce?

To say that they are doing nothing would hardly be true, but that there is a remarkable negligence displayed in this direction is too true.

So far-seeing, close-thinking benefactors as Messrs. Guthrie & Fink, of the Louisville and Nashville railroad, the community indebted for the pushing forward of the great work of completing the Lebanon Branch road, to the desire to be rid of the delicate duty of enforcing justice against a sovereign State, must have had full as much influence with a majority of the judges as the very dirge of the nation can afford them. The fineness of that reason was well illustrated by an example which happened during the Presidency of Madison. Upon the return of a bill with his objections, the cause of which was the non-enforcement of the Constitution, he was compelled by the objection of the Senate to withdraw his veto, and to sign the bill.

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But the building of railroads is not only of enterprise in which the people are periled, nor will energy in this direction alone secure the commerce so indispensable to the enriching of the community. Railroads, as it were, but so many invitations to trade, so many avenues, and it will require the enterprise and labor, the industry and perseverance, the spirit and alertness that are manifested by the merchants of the East, to make trade accept these invitations and throng along these avenues.

There is not enough of the spirit of "live and let live" displayed in our community. The money that travels away from home seldom brings back to the purveyor the merchandise that would command a premium in the hands of others.

It is a mistaken idea altogether that the family who desire a stock of fall and winter clothing can travel to New York or Philadelphia, defray expenses on railroads and at hotels, suffer the incidental drippings from the purse that are necessary to comfort. Liquidate freight and express charges, and find that it has been a paying trip. When the cost is compared to the cost of the article purchased at home, the folly of this course will appear in a striking light.

Setting aside the economical character of the proceeding, it is discouraging to the enterprise and best interests of our mercantile community. To encourage and sustain trade at home is to ensure low prices, to lend spirit to enterprise, to promote healthy competition, to give to labor its proper value, to secure increase of patronage, to decorate the city with magnificent public edifices, private dwelling and storerooms, to enhance the value of real estate, and, in short, to contribute to the prosperity of all classes of the community.

The ease in financial circles, enjoyed through the unnatural inflation of our currency, is rapidly subsiding, and capital is commanding again exertion interest, and is hard to get even at the highest. It behoves our citizens, then, if they would escape financial embarrassment, to conduct their purchases, if possible, as to keep in circulation at home, the money so necessary to a healthy and vigorous commerce.

The Democrats are much sanguine of electing Mr. Hoffman than they were a fortnight ago. The number of names of persons already made to vote in the city will approach, if it does not exceed, a hundred thousand; and this fair is regarded as favorable to a very heavy turnout. A very strong effort has also been made to attract the German beer-drinking voter, and especially the German beer-beer, on the Democratic side.

The existing license law is sweepingly condemned by respectable and responsible dealers to whom it is of decided advantage, and as it was enacted by a Republican Legislature, it is easy to excite hostility to the Democratic party on account of it. The naturalizing committee of the Democratic party are very active, and are naturalizing and registering a very heavy vote, in addition to what has been hitherto cast.

The action of the Syracuse Convention in authorizing a reorganization of the Union party in this city, and the exclusion of all who declined to accept the creed of political faith and action prescribed by certain political aspirants, is likely now to make itself somewhat injuriously felt.

This state of things can scarcely fail to affect somewhat seriously the Republican party of the city, as very many of those ex-members of the party, who have attempted to reorganize the party will not recognize it by supporting its nominees.

As these very cheering indications of electing Mr. Hoffman are the same as that of the General Assembly when in session, to take place in the fall, and the election of the two Houses of Congress, it is to be expected that the radicals will be successful in their efforts to defeat the election of Mr. Hoffman.

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There is hope for the Drunkard, and he should not be treated as an outcast because he is sick, and a remedy should be employed for his recovery; that remedy, which has saved many from untimely graves, is carefully prepared by RAYMOND & CO., No. 74 Fourth st., Louisville, and sold at \$2 per package. Persons disposed to try it will say for "Urban's Inebriate's Hope." It is sent by mail postage free.

Mammoth Cave Hotel for Lease.

The Hotel and Farm at the Mammoth Cave is offered for lease for four years, from the 1st day of October next, for \$1,000 per month, and \$100 per month for undivided interest.

The furniture, carpet, beds, laths, etc., are all included in the rent, and the lessee is bound to hold the property in good repair.

Persons who are desirous of viewing the property may do so by calling on ROGERS & PROCTOR, corner of Main and Fourth, Louisville, Ky.

A wicked old man, like light rail, is dead-in-age.

(For the Louisville Journal.)

The writer's attachment was yesterday called the case of Hollingsworth vs. Virginia, decided by the Supreme Court in the last term, and reported in this paper. It is conceded that the court, seemingly decided in favor of the validity of the eleventh amendment of the Federal Constitution, proposed in 1791 by a two-thirds vote of the Congress, and ratified by three-fourths of the States on the ground that the approval of the President was not necessary to the legal validity of the proposal. The very short statement of the decision does not give the reasons of the court, and it is not known what was said by one of the Judges during the argument of counsel, to the effect that an amendatory joint resolution which the Congress did not require should be referred to the President for his approval, because there would be no utility in so doing, as a two-thirds vote was required for the passage of the resolution and the same could only be obtained by a grave doubt whether it was within the judicial power to do so. The court, however, did not decide in so far as to sustain the validity of the amendment.

The writer must therefore make a full, frank retrait of the imputation he attempted to cast upon the radical party by reason of their failure to present the pending amendment for the approval of the President, and to make it available at all times, must rest exclusively upon the seemingly sinister effort they have been attempting at making a distinction as to this matter between a joint and what they call a concurrent resolution of the two Houses.

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LOUISVILLE JOURNAL

FRIDAY, OCTOBER 26, 1866.

Local Affairs.

"THE SOUTHERN TEACHER."—This is the title of a monthly journal of education to be edited and published by S. M. Ainsworth, at Atlanta, Ga. It will be issued about the middle of next January. We wish the enterprise success.

IN MEMORIAM.—We condole with our friend Philip Doern, of the Anzeiger upon the loss of his only son, a bright boy of five summers. Last year our friend lost a loved child, and again death has robbed the household of a loved one. In their bereavement may the sons of parents remember—

"We know how sore each holt,

The pure and chaste dead—

—and weeping bower

The mourners' pray is said."

And that the dead children have pre-

"garded not their region bright,

Whose spirits are still."

UNPLEASANT FOR THE LADY.—Yesterday morning a very handsome and elegantly dressed lady, in crossing Green street at Fourth street, met with a very embarrassing accident. Gusty Boreas threw her veil across her eyes, and in endeavoring to step over the gutter she put her foot into it and fell sprawling upon the sidewalk. It was embarrassing both to the lady and the spectators. She, however, gathered herself up very quickly and walked away as dignifiedly as the circumstances would permit.

IN JULY.—In July last, Lieut. Hampton, of the 35th Kentucky, who was then residing near the Ohio river, in Spencer county, Indiana, was taken from his bed about midnight by four men, who declared in the presence of his wife that they intended to kill him. They tied and gagged him, and proceeded with him to the river, where pistol shots were soon afterward heard, and several days after his capture was found floating in the river near Hopkinsville. The Governor of Indiana made a requisition on the Governor of Kentucky for four citizens of Kentucky charged with the murder of Lieutenant Hampton. The Governor of Kentucky issued a warrant for the arrest of the parties charged and two of them, John Carlisle and son were arrested. They were brought yesterday before His Honor, Judge Muir, for identification, but the witnesses not being present, further proceedings in the case were postponed until 10 o'clock today.

"GOD BLESS THE PRESIDENT."—We have received from the publisher, Wm. A. Pond & Co., 547 Broadway, N. Y., a National song with the title above. We admire the hero, Andrew Johnson, but cannot say so much for the literary merit of the composition. As to the musical worth of the piece, that we could only comment on, after testing through the delicious sweetness of a pretty girl's well cultivated voice. Send a handsome gift to reward your efforts, and we promise to grow eloquent in noticing them. Ponds! Somebody bring the music and let us hear it.

CONNUAL.—The following notice was inadvertently omitted from the matrimonial item in yesterday's Journal:

Married, on the morning of the 23d inst., at the residence of D. S. Maxwell near Lebanon, Ky., by the Rev. J. H. Cleland, D. H. Howell, U. S. Assistant Professor, at Lebanon, Ky., and Miss Emma Maxwell, daughter of Dr. John C. Maxwell, of Lebanon, Ky.

REPAIRS OF THE COURT-HOUSE.—The steam-heating apparatus in the Court-house is being put in repair by George Brobst, and the building will be ready for the cold term in about one week.

Recruiting for the regular army is at present quite brisk in New Albany.

Railroad Intelligence.—The SOUTHERN RAILROAD amount to \$904,450, leaving \$55,550 short of the proposed million. Of course the enterprise will fail for want of funds. All that is now needed is the company of capitalists who will undertake to build the road. So soon as such a company shall be organized, and the road located, a large increase of the bonds can be obtained, and then the time for the disbursement of the city can be made up at once.—*Cincinnati Times.*

The Legislature of Alabama, during its last session, granted a charter to the Mobile and Alabama Grand Trunk Railroad Company, to construct a railroad from Mobile northward through the coal and mineral regions of the State, and by intersecting the various lines of railway in the State, to form a main trunk into which the traffic of these lines should converge and find an outlet to Mobile Bay. This is all that is now needed is the company of capitalists who will undertake to build the road. So soon as such a company shall be organized, and the road located, a large increase of the bonds can be obtained, and then the time for the disbursement of the city can be made up at once.—*Cincinnati Times.*

An Order was given when the notorious Captain Slagle covered himself with a broadsword and met with merited oblivion by sacking the houses of unoffending and industrious colored men in June last, that we never need be afraid of such another outrage.

Waving all criticisms for the present, I hope when the notorious Captain Slagle is tried for his conduct in this country, he will be found guilty of robbing a man, he white or black, of his pocket-book, and destroying his property. They further believe that no braver soul in attacking unoffending and defenseless colored men and children, and that only evil can arise from the mob spirit which actuated him.

The law in question to have a two-fold object, i.e. to punish the persons who committed the wrong, and to make them cease from doing it again.

Waiting for your answer to my letter, to the effect that the action of the Commission would not entitle the War Department to be submitted to the Attorney-General of the United States before being acted upon?

Your answer to the above will be thankfully received.

J. W. CARDWELL & CO.

REPLY TO MR. BLACKETT.

Mr. J. W. Cardwell & Co., Louisville, Ky.

Sirs.—Your favor of the 13th inst., in reference to a letter of Gen. Garret Davis touching his action as to a recent appointment, to be made to audit the claims of colored men in the State, I have

written to the Secretary of War, and am awaiting his answer.

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